CASE NO: F 80 LS 095

IN THE COUNTY COURT AT LEEDS

The Court House
Oxford Row
Leeds LS1 3BG

Before :

His Honour Judge Saffman

- - - - - - - - - - - - - - - - - - - -

Between :

MS MICHELLE JOY DAWSON (AS EXECUTRIX OF THE ESTATE OF MR MUHAMMED DAWSON) — **Claimant**

- and –

(1) ALVIN NOEL DAWSON
(2) RANDY NOEL DAWSON
(3) JAYNE VICTORIA FARQUHARSON — **Defendants**

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

Mr Chris de Beneducci (instructed by Irwin Mitchell) for the Claimant
The Defendants in Person

Hearing dates: 29, 30, 31 October and 1 November 2019.

- - - - - - - - - - - - - - - - - - - -

I direct that, pursuant to CPR PD 39A para 6.1, no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

JUDGMENT

Introduction

1. This claim relates to the estate of Mr Mohammad Dawson who died on 22 February 2014 aged 87. It is not in dispute that the deceased did not leave a large estate, letters of administration to which I shall refer shortly give the net value of the estate at a sum not exceeding £101,000. I heard this claim over the last 3 days and I give this judgment having considered the matter overnight.

2. The Particulars of Claim giving rise to these proceedings take issue with the validity of 3 wills made by the deceased. The first, which I shall call the 2003 Will, is wrongly dated 13 February 3003 but clearly should have been dated 13 February 2003, the second, dated 13 September 2004 (the 2004 Will) and a third which is undated but which the claimant contends was executed on 17 November 2013 and which I shall refer to as the 2013 Will.

3. The claimant and the 3 defendants are siblings. The claimant is represented in these proceedings by Mr Chris de Beneducci of counsel, the defendants are unrepresented but have had the benefit of a McKenzie friend namely Mr Jeffrey Dees. Surprisingly for a McKenzie friend he is also a witness although his evidence about the matters which I am called upon to determine is at best indirect and at worst entirely peripheral.

4. By the 2013 Will the deceased appointed the claimant and a long time friend of his, Jean Sterling as executrixes. He gave a number of specific bequests which included £1000 each to the defendants and £5000 to his granddaughter, Sabrina Dawson. In addition, he bequeathed £500 to 2 grandsons, Lee Dawson and Jerry Dawson. His residuary estate was left to the claimant. There was an unusual provision in the Will by which if any of the deceased's children challenged it, they would lose their bequests under it. That provision appears not to have extended to his grandchildren.

5. The 2004 Will differed as to the appointment of personal representatives in that only the claimant and not Mrs Sterling was appointed as executrix. Additionally, the bequests to each of the defendants was only £100. As for the claimant, the deceased devised a one half share of his home to her and a 10% share of his home to Mrs Sterling's children, Dione and Kim who were his godchildren. His residuary estate was left to the claimant. Once again there was a provision by which if any of the defendants challenged the terms of the Will they would lose all benefits thereunder. That provision differed from the provision in the 2013 Will because the corresponding provision in the 2013 Will included the claimant.

6. The 2003 Will appointed Dione and Kim as executrixes. It gave £100 each to each defendant and £10,000 to the claimant. The residue of the estate was left to Dione and Kim. This Will therefore was very different to the two later wills in terms of its provisions.

7. They were however all professionally drafted. The deceased instructed Messrs Steel and Clunis, Solicitors in connection with the preparation and execution of all three. Indeed the 2003 Will was witnessed by the sole proprietor of that firm, Dorothy Gillette and her

husband, Noel Gillette who also worked at the firm, albeit not a solicitor. The 2004 Will was witnessed by a Mr Jermaine Ranger, an employee of the firm at that time as well as by Mrs Gillette. The 2013 Will was allegedly witnessed by Mr Noel Gillette and a Mr Austin Dawson who may or may not be a cousin of the deceased. It appears that none of the parties are sure whether he is a relative or not.

8. It transpires that there is now no challenge by the defendants to the 2003 Will. Their position appears to be that they still have doubts about its authenticity arising out of a doubt that it was actually executed by the deceased. Nevertheless, their clear position is that they do not challenge it. If the 2004 Will and the 2013 Will are invalid therefore the 2003 Will will govern the distribution of the deceased's estate. The defendants will be limited to £100 each.

9. In short, the position which the defendants take is one which, if successful, would have the effect of benefiting them to the tune of £100 each. While the 2004 Will which they also challenge did not increase their inheritance, the 2013 Will did so tenfold. Nevertheless, their position is that they challenge that Will in favour of one bequeathing them merely £100 each.

10. All this is against a background where the claimant's costs of this litigation appear at one point to have been budgeted at just short of £70,000 and the defendants who at an earlier stage were represented, then filed a cost budget of just short of £34,000.

11. It may well be that the biggest financial winners from this litigation if it transpires that the 2003 Will has not been revoked would be Dione and Kim Sterling who were the residuary beneficiaries under that Will. By a letter dated 4 August 2017, and pursuant to an order of the court, they were given the opportunity to join in the proceedings. It is apparently an opportunity of which they have not availed themselves.

12. It is right to say that Sabrina Dawson, Lee Dawson and Jerry Dawson were also invited by the same court order to consider whether they wished to join in the proceedings in order to seek to protect the bequests to them arising out of the 2013 Will. They too have failed to indicate an inclination to do so although Sabrina Dawson gave evidence in this case on behalf of the claimant.

13. On 29 January 2015 letters of administration were granted to the defendants. Representation in this form is clearly not appropriate where there is a valid will. In those circumstances it is appropriate to take out a grant of probate. It is part of the claimant's claim that the letters of administration be revoked in favour of a grant of probate. Her position is that the grant of probate should been respect of the 2013 Will. The defendants agree that the grant of letters of administration must be revoked on the basis that they do not challenge the validity of the 2003 Will. They would not object to a grant of probate therefore in respect of the 2003 Will but object to such a grant in relation to either of the two later wills.

The issues

14. I do not intend to dwell on any issues relating to the 2003 Will because the defendants do not pursue any arguments by which its validity is challenged. Their challenge to the 2004 Will is on the basis that that Will was not executed by the deceased. They argue that the signature it bears is not his signature and that his signature has been forged. I have already observed that it is witnessed by a Mr Ranger and Mrs Dorothy Gillette. The assertion is that they improperly endorsed their signatures as witnesses.

15. This is the only basis upon which the validity of the 2004 Will is challenged. To make it clear, there is no challenge to this Will based for example on lack of testamentary capacity or undue influence.

16. That is not so of the 2013 Will. The defendants challenge the validity of this Will on the grounds that it was not signed by the deceased and further that, contrary to section 9 *Wills Act* 1837 any signature was not appended in the presence of the witnesses present together and in the presence of the testator. Rather, it is alleaged, Mr Noel Gillette witnessed the Will on a different occasion to Mr Austin Dawson. It is further contended that the deceased lacked testamentary capacity at the time that he gave instructions for the preparation of this Will and when he executed it.

17. It is necessary to determine therefore:

    a. Whether the signature reading "*M Dawson*" on the 2004 Will is that of the deceased.

    b. Whether the signature reading "*Dawson*" on the 2013 Will is that of the deceased.

    c. If it is, whether, in accordance with section 9 *Wills Act* 1837, the deceased made or acknowledged his signature in respect of the 2013 Will in the presence of both witnesses present at the same time.

    d. Whether the deceased had testamentary capacity when he gave instructions and executed the 2013 Will.

18. Of course, if I find that the 2013 Will is valid, it is not strictly necessary to make any findings at all in relation to the 2004 Will because either it is invalid per se or it is revoked by the later Will with the result that any determination in respect of it becomes somewhat academic. However I acknowledge that a finding that the 2004 Will has not been executed by the claimant despite the endorsement of witnesses to the effect that it has may well inform the issue as to the status to be attached to the 2013 Will bearing in mind that both were prepared and witnessed by members of the firm of Steel and Clunis, although each was witnessed by different people.

The Law

Execution of a will

19. Section 9 *Wills Act* 1837 as amended and applicable to deaths on or after 1 January 1983 states; "*no will shall be valid unless-*

    (a) it is in writing, and signed by the testator or by some other person in his presence and by his direction; and

    (b) it appears that the testator intended by his signature to give effect to the will and

    (c) the signature is made or acknowledged by the testator in the presence of 2 or more witnesses present at the same time and

    (d) each witness either-

    (i) attests and signs that will; or

    (ii) acknowledges his signature

    in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary".

20. *Williams on Wills* 10th edition paragraph 13.1 states;

> *"If a will, on the face of it, appears to be duly executed, the presumption is in favour of due execution applying the principle "omnia praesumuntur rite esse acta".* (all things are presumed to have been done correctly)
>
> *The force of the presumption varies with the circumstances. If the will is entirely regular in form, it is very strong and if the form is irregular and unusual the maxim does not apply with the same force. If the witnesses are entirely ignorant of the details of the execution the presumption is the same. If they profess to remember and state that the will was not duly executed and negative evidence is not rebutted by showing that the witnesses are not to be credited, or, taking their statement of the facts, that their memories are defective, the will must be pronounced against. The court does not require direct affirmative evidence of due execution"*

21. In paragraph 13.3 it is said that

> *"evidence rebutting the presumption must be positive and reliable…… the burden of proving due execution, whether by presumption or by positive evidence rests on the propounder (in this case the claimant).*
>
> *The direct evidence of both the attesting witnesses, unless discounted, rebut the presumption and the evidence of one of the witnesses has been held to do so but even an apparently positive recollection of contradicting the attestation clause must be treated with caution"*

22. Mr de Beneducci in his closing submissions referred me to a different authoritative work on Wills namely *Theobald on Wills* 18th edition which states at paragraph 4 – 008 that:

> *"an attestation clause will usually, but not always, provide sufficient evidence that both witnesses were present when the testator signed and acknowledged the will"*

23. He also referred me to the case of *Kentfield v Wright* (2010) EWHC 1607 (Ch) as authority for that proposition and in which it was held that the "*strongest evidence*" was required to rebut the presumption of due execution. As Mr Justice Vos, as he then was, stated in that case:

> *"…. the Court of Appeal made it crystal clear that the strongest evidence is necessary to rebut the presumption of due execution, where the will is regular on its face and contains an attestation clause, as this Will does, stating that it was signed in the presence of both witnesses"*

24. Finally, on the legal principles applicable, Mr de Beneducci took me to the case of *Patel v Patel* (2017) EWHC 133 (Ch) and in particular paragraph 104 as authority for the proposition that, where there is an allegation of forgery, the burden is upon the person so alleging to establish forgery. The standard of proof however remains simply the balance of probabilities. There is no enhanced standard of proof simply because the action alleged, if true, amounts to a criminal act.

25. The issue of forgery arises because inevitably if the signatures in the 2004 and 2013 Wills purporting to be those of the deceased are not in fact his signatures then they have been forged by somebody else.

Testamentary capacity

26. The law as to testamentary capacity is well-established. The burden of proof and the manner in which it shifts is best set out in *In re Key Deceased* 2010 EWHC 408 at paras 97 and 98.

The burden of establishing capacity at the relevant time is on the person propounding the will (in this case the claimant).

27. However, there is a rebuttable presumption that a will which is duly executed and which is rational on its face was executed by a testator who had testamentary capacity. Authority for that can be found in Theobald paragraph 3 – 009 and 3 – 00 10.

28. In this case whilst there is an issue about whether the 2013 and 2004 Wills are properly executed although it does not appear to be suggested that either are irrational on their face.

29. If I find that either or both have been duly executed then the evidential burden shifts to the objector (in this case the defendants) to raise a real doubt about capacity. If a real doubt is raised, the evidential burden shifts back to the propounder to establish capacity.

30. The issue of testamentary capacity is one for the court to decide, it is not one to be delegated to experts, albeit that their knowledge skill and experience may be an invaluable tool in the analysis of that issue.

31. Having set out the fairly complicated position with regard to burden of proof, I refer to *Hawes v Burgess* 2013 EWCA Civ 74 in which Mummery LJ had this to say at paragraph 13;

> *"..... Although talk of presumptions and their rebuttal is not regarded as especially helpful nowadays, the courts realistically recognise that, for example, if a properly executed will has been professionally prepared on instructions and then explained by an independent and experienced solicitor to the maker of the will, it will be markedly more difficult to challenge its validity on the grounds of either lack of mental capacity or want of knowledge and approval than in a case where those prudent procedures have not been followed"*

and at paragraph 60 he says;

> *"My concern is that the courts should not too readily upset, on the grounds of lack of mental capacity, a will that has been drafted by an experienced independent lawyer. If, as here, an experienced lawyer has been instructed and has formed the opinion from a meeting or meetings that the testatrix understands what she is doing, the will so drafted and executed should only be set aside on the clearest evidence of lack of mental capacity."*

32. So what is the test for mental capacity? The classic test at common law as to testamentary capacity is that set out in *Banks v Goodfellow* (1870) LR 5 QB 549 at 565. The testator must;

- understand the nature of his act i.e. executing the will and its effect (i.e. the effect of his wishes being carried out at his death)
- understand and recollect the extent of his property
- understand the nature and extent of the claims upon him both of those whom he is including in his will and those whom he is excluding from his will
- not be subject to any disorder of the mind as shall "poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties-that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made".

33. In *Abbott v Richardson* (2006) WTLR 1567 at 1627 it was held that the testator must have the mental capacity to make decisions which take into account the relevant property, persons and circumstances and arrive at a "*rational fair and just*" testament. And in *Simon v Byford*

(2014) EWCA civ 280 at paragraph 40 Lewison LJ stated that "*capacity depends on the potential to understand and is not to be equated with a test of memory*".

34. At what point does the testator have to possess testamentary capacity? Quite clearly it is at the time that he gives instructions for his will. As to capacity when the will is executed, if he has capacity at that point then that is sufficient but even if he does not, *Parker v Felgate* (1883) 8PD 171 is clear authority of the proposition that capacity does not necessarily have to be present at the time of the execution of the will. In this case however it is not suggested that there was any change in the deceased's mental capacity between giving instructions for the will and signing it, it was after all only a week at least evidence of the claimants. It seems to me that in the circumstances I need not dwell on the principles laid down in that particular case.

35. Finally, with regard to the law there has been a good deal of hearsay evidence in this case either in the form of witness statements but no oral evidence in relation to them or indeed in relation to things said to others about which simply one of the interlocutors is giving evidence. In the circumstances reference has been made to s4 Civil Evidence Act 1995. It is as well to set out that section if only for the benefit of the defendants as litigants in person:

> **4 Considerations relevant to weighing of hearsay evidence.**
>
> *(1)In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.*
>
> *(2)Regard may be had, in particular, to the following—*
>
> *(a)whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;*
>
> *(b)whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;*
>
> *(c)whether the evidence involves multiple hearsay;*
>
> *(d)whether any person involved had any motive to conceal or misrepresent matters;*
>
> *(e)whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;*
>
> *(f)whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper* evaluation of its weight.

Experts

36. On 24 July 2017 District Judge Goldberg gave permission for the joint instruction of Radley Forensic Document Laboratory to report on the validity of the signatures of the deceased actually in respect of all three Wills although of course I am only concerned with the later two. In fact, notwithstanding the terms of the court order, the report subsequently prepared only addresses the signatures on the later two Wills.

37. The report of Ellen Radley, a forensic document examiner, is dated 20 December 2018. It is right to record that the defendants have some concerns about the manner in which the expert was initially instructed. They argue that some documents which may have assisted Mrs Radley may not have initially been sent to her. Nevertheless, it seems that by the time that she

prepared a report she was in possession of the documents which all parties expected her to be in possession of. They appear to be annexed to her report. They include for example a note written by the deceased in about 2000 to the third defendant. It is right to observe that that note is in printed form in the sense that the manuscript writing contained in it is not joined up writing, each letter is separate from its neighbours and that is also so with the signature which is "*Mohammed Dawson*".

38. Turning back to the body of the report, Mrs Radley concludes in her "*Summary of Opinion*" that:

> "*Due to the limitations in this matter, I am not able to establish the full parameters of Mr Dawson's range of writing variation and cannot determine with any great confidence, his signature style and handwriting capability at the salient point in time i.e. 2004 and 2013.*
>
> *Consequently, I am of the opinion that the evidence has to be regarded as inconclusive as to whether Mr Dawson wrote his name on the 2 questioned Wills. Only presentation of a much larger number of course of business signatures of Mr Dawson, strictly contemporaneous with the question Wills, will allow the matter to be taken further.*"

39. Helpfully, she provides a glossary of "*Opinion Terminology for Handwriting Signatures*". It states that:

> "*where the weight of evidence does not incline an examiner one way or the other, an inconclusive opinion will be offered. It should be noted that there has to be a meaningful accumulation of evidence before an opinion other than inconclusive can be offered i.e. where there is minimal evidence pointing in one direction or another, this may not be adequate information on which to base a reliable positive (or negative) opinion of authorship. The inconclusive level of opinion may, in fact, cover a relatively broad band of evidence up to a point whereafter the evidence allows the expert to confidently offer an opinion in support of one proposition or the other*".

40. The conclusion of the report therefore is that Mrs Radley cannot say one way or another whether the deceased signed either of these 2 Wills. In the circumstances the report is neutral and of no real assistance.

41. The defendants refer me to another 2 reports prepared by a Mr Jameson Davis, handwriting expert. His reports predate Mrs Radley's. In fact, no permission has been obtained to rely on the evidence of Mr Jameson Davis. Accordingly, those reports can carry no weight because technically they are not admissible.

42. Even if that were not the case however, they do not shed light on the issue of the genuineness or otherwise of the signatures on 2004 and 2013 Wills.

43. All Mr Jameson Davis is able to say is that there are significant differences between the deceased's known signatures and those on the Wills and he concludes that "*at this early stage that the signatures on the Wills in question are suspicious.*" The reference to "*at this early stage*" makes it clear that his conclusions in respect of both Wills are provisional ones. Indeed, Mr Jameson Davis essentially says as much. His reports in respect of the 2013 Will starts with the caveat in bold print:

> "***I have not had the opportunity to examine the original signatures or high definition digital scanned copies taken from the original questioned signature.***

> ***Therefore, my initial observations on the copies of the signatures of M Dawson are very limited as far as my skills allow at this early stage***"

44. A similar caveat appears also in bold print at the top of his one page report into the 2004 Will but the caveat is not identical. The last sentence reads:

> "***my initial observations on the copies of the signature of M Dawson are therefore somewhat limited***"

There is not the additional phrase which appears at the end of his caveat concerning the 2013 Will.

45. I do not know whether the difference between the 2 caveats is deliberate or not but it does not seem to me that it matters much. Both make it clear that his opinion, such as it is, is simply a provisional one.

46. I should add that, in any event, in coming to his conclusions, Mr Jameson Davis appears to take into account what may be extraneous factors because his assessment expressly takes account of "*all the circumstances around the execution*". It does not appear to be in doubt that his information as to the circumstances around the execution emanated from the defendants without any input from the claimants who were not consulted in respect of the commissioning of this report.

47. In the circumstances the question of execution of the Wills by the deceased and the question of the circumstances in which the 2013 Will was witnessed essentially must be resolved by reference to the lay evidence and the application of the law to that evidence.

48. Let me deal first with the question of execution of the 2004 Will. As I have said, I deal with it notwithstanding that in a sense the answer is academic if the 2013 Will is valid because I accept that a conclusion that the 2004 Will is invalid can feed into issues in relation to the validity of the 2013 Will.

The 2004 Will

49. What is the evidence in support of the defendants' proposition that a will prepared by solicitors and which appears to be "*regular in form*" and which is witnessed by 2 members of a solicitors' firm was not signed by the deceased but rather was signed by somebody else, contrary to the endorsement by the witnesses?

50. Paragraph 4 of the first defendant's defence and paragraph 5 of the second and third defendants' defence state "*in light of the parties concerns over the 2013 Will such concerns must extend to the 2003 Will and the 2004 Will which appear to have been prepared by either Mr Gillette of Steel and Clunis and Clunis or another fee earner within that firm*".

51. Mr de Beneducci suggests that that is a somewhat speculative basis for challenging the genuineness of the signature but it has to be said one can see why the defendants may have had a suspicion when it appears that that suspicion may, initially at least, have been shared by the claimant. I say that because the Particulars of Claim to which these defences are a response states, at paragraph 3,

> "3. *The claimant is concerned that the 2013 Will may technically be invalid as its execution may not have complied with section 9(c) of the Wills Act 1937 (sic). In that:*
>
> *A The lawyer who drafted and witnessed the 2013 Will, Mr Gillette of Steel and Clunis and Clunis Solicitors, states by way of file note that both himself and the other*

witness, Mr Austin Dawson, were present at the same time when the 2013 Will was executed;

B Mr Austin Dawson has informed the claimant that upon his recollection he did not witness the 2013 Will in the presence of Mr Gillette but attended on a different day to witness the 2013 Will"

52. The defendant's suspicions however are not simply born of the claimant's apparent initial concerns about the genuineness of the signature. They stem more emphatically from all 3 defendants' firm evidence that the signature on the 2004 Will looks nothing like their fathers.

53. The first point made by all 3 is that the signature on the 2004 Will is in script form i.e. joined up writing. All 3 defendants assert that their father never wrote in any form other than print with each letter separated from its neighbour. The note to the third defendant to which I have already referred was prayed in aid as an example of that. It should be said that that note appears to have been one the documents supplied to Mrs Radley but she was still unable to offer a conclusive opinion.

54. The second point appears to have its genesis in a conversation apparently had on the telephone between Mr Gillette and the first defendant. It is contended by the first defendant that, in the course of a telephone call, Mr Gillette had said that his wife, Dorothy Gillette, the proprietor of the firm of Steel and Clunis, may have signed the Will for the deceased. The first defendant recorded that conversation apparently with the knowledge of Mr Gillette and I have been provided with a transcript. I was referred to the following part of the transcript:

"Alvin Dawson (AD) well dad has not signed it anyway that looks like the writing that is on the will you know the nice writing the Gillette signatures.

Noel Gillette (NG) Um hu

AD dad put that date in there, somebody has put that date in that not dad's handwriting and also

NG know but may be (inaudible) who are the witnesses probably see if he came here and what it was was witnessed to have the solicitor sign it for him.

AD yes well what date was that will made Sir?

NG I do not know I have not got any information here"

55. It has to be said that the interpretation that Mr Gillette is here admitting that his wife may have signed the 2004 Will is, in my judgment, stretching the meaning of that conversation beyond breaking point.

56. The comments by Mr Gillette upon which the defendants rely seem to me to be incoherent and in any event, since what Mr Gillette says seems to be said in the context of a discussion of the date of the Will, if there is some suggestion by Mr Gillette that his wife had an input into the Will it might well be about the date rather than about the signature.

57. It would also be very surprising in any event for a legal practitioner, whether he be a solicitor or not, to consciously to admit that a signature might, in effect, be forged by his solicitor wife when he knew that that conversation was being recorded.

58. There is also a witness statement from a Mr Graham Snow dated 3 May 2019. In it he states that on 15 May 2015 he accompanied the second defendant to the offices of Care Watch whose employees were responsible for caring for the deceased on a daily basis. Mr Snow

states in his witness statement that the 2 carers who specifically looked after the deceased were shown copies of the 2004 and 2013 Wills and both women stated that they did not recognise the signatures as those of the deceased. Mr Snow states that the carers produced a number of sample care sheets bearing the deceased's signature which, when contrasted with those on the Wills, looked completely different. The carers also stated that the deceased could "*hardly hold a pen and was so confused he never knew what day of the week it was*". All this was apparently said in the presence of Mr Snow as well as the second defendant.

59. Mr Snow has not attended to give evidence. He has written to the court to say that he is elderly and unwell and lives too far away. Obviously, that makes his evidence hearsay evidence to which the provisions of the *Civil Evidence Act* 1995 apply and which affects the weight to be attached to it.

60. It is also right to observe that, as a matter of fact, it appears that Mr Snow's evidence must be wrong when he refers to the 2004 Will having been produced both to him and to these carers. It appears to be accepted that that did not come into the possession of the defendants until November 2015 and so they would not have had it on 15 May 2015 when Mr Snow said it was produced to these carers. Mr de Beneducci argues that this also affects the reliance that can be placed on what Mr Snow has to say.

61. What is the evidence of the claimants? There is a witness statement from Dorothy Gillette dated 3 May 2019. In it she contends that the deceased did indeed execute the Will in her presence and in the presence of Mr Jermaine Ranger who was then a paralegal at the firm. She states that the deceased visited her office for this purpose and she and Mr Ranger witnessed the Will after the deceased had signed it.

62. She has not attended to give oral evidence and thus her evidence is hearsay evidence which cannot be tested by cross examination. I am told that she is unwell. I have no medical evidence to that effect and the reason for non-attendance obviously affects the weight that can be attached to the evidence.

63. So too does the fact that this evidence cannot be tested by cross examination. It may well be that, had she attended, she would have been asked how she could remember events going back to September 2004 particularly when her witness statement appears not to have attached to it any sort of file note. I observe that one would not have thought that witnessing a will was a particularly memorable event for a high street family solicitor.

64. Nevertheless, that is her evidence, she signed it below a statement of truth and her witness statement makes it clear that she had nothing to gain directly or indirectly by certifying that the deceased signed the Will in her presence and in the presence of Mr Ranger if that were not so. I have to say that it is indeed difficult to see what could possibly be in it for Mrs Gillette to lie in this way when witnessing a will. If the fact that she had done so was ever exposed that would irredeemably destroy her career and her reputation and it is not easy to see why she would have done it.

65. If I understand the second defendant correctly, he suggested that the motive may have been to take the focus of scrutiny off the 2013 Will. He argued that Steel and Clunis had dug themselves into a very large hole in connection with the 2013 Will and that therefore a 2004 Will might well have taken the pressure off them because it would divert attention from the 2013 Will. It has to be said that that seems to be a very convoluted, not to say Machiavellian, motive.

66. In any event that is not the only evidence of proper execution upon which the claimants rely. They also rely on the written and oral evidence of Mr Jermaine Ranger. Mr Ranger's written statement confirms that he was present at the execution of this Will on 13 September 2004 in his capacity as a paralegal at that firm. He confirms that Mrs Gillette was also present when the Will was executed.

67. Mr Ranger gave oral evidence along the same lines as his written evidence. He worked for Steel and Clunis for 5 years ending in 2008. He no longer has any connection with them. He lives miles away in Kent. He had experience of making and witnessing Wills. He suggested perhaps about 5 or 6 per month. He knew of the rules relating to the execution of wills and the need for there to be 2 witnesses present at the same time and present with the testator.

68. Somewhat surprisingly he has a specific recollection of witnessing this Will. I say surprising for the same reasons as I raise in respect of Mrs Gillette's memory, namely because we are going back to 2004 and the events cannot be thought to be so unusual as to stay in a lawyer's memory. However, Mr Ranger was clear that he had a clear recollection of these specific events because they coincided that week with a significant event in his life. He also appears to be something of a fan of Formula 1 and he recalled that the week in which this event occurred was also the week in which there was a significant development in F1. That has enabled him to retain details of events of that week which might otherwise have faded into obscurity.

69. Once again, it is difficult to see what Mr Ranger could have gained by falsely signing this Will. Presumably, the motive that the second defendant attributes to the conduct of Mrs Gillette must apply equally to Mr Ranger but that seems to me to be even less credible in respect of Mr Ranger than it is in respect of Mrs Gillette. If Steel and Clunis were in a hole in relation to the 2013 Will (and it is not clear to me what that "hole" would have been), Mr Ranger has even less incentive to put his honesty and integrity on the line than has Mrs Gillette bearing in mind that he was, and I say this with the utmost respect to him, merely a paralegal at that firm while she was and is the proprietor and he now has absolutely nothing to do with the firm. I will be corrected if I am wrong, but, as I understand it, he only appears as a witness in this case because he has been served with a witness summons.

70. In addition, of course, the expert evidence of Mrs Radley does not to support the defendants' view that the deceased could not have signed this will and she has come to that conclusion (or her non-conclusion) having had sight of the documents upon which the defendants rely.

Conclusion as to 2004 Will

71. The starting point must be the law to which I have referred and, in particular, what is said in *Williams* and in *Theobald*. As I have said, those authoritative textbooks make it clear that if a will on the face of it appears to be duly executed, the presumption is in favour of due execution. This Will on the face of it appears to be duly executed.

72. Furthermore, if the will is regular in form (as this one clearly is) the presumption is very strong. Even if one witness were to say that the will was not duly executed that must be treated with caution. Here of course we have both witnesses saying that the will was duly executed.

73. Furthermore, I have to remind myself of the fact that the defendants' claim amounts to an allegation of forgery and that the onus of proof accordingly is on them to establish it.

74. I do not find a sufficient basis for rejecting the evidence that this Will was signed by the deceased. I accept that one of the attesting witnesses namely Mrs Gillette, has only given hearsay evidence about what would otherwise be an unmemorable event many years ago. It is

a surprising feat of memory about which she would have been questioned had she attended but importantly the fact is that her evidence is supported by that of Mr Ranger.

75. It appears to me that he has no axe to grind at all and had absolutely no motive to lie in an important legal document. He explained why he remembers the occasion of the signature of this Will. The defendants, in their final submissions, questioned whether his explanation for remembering this withstood scrutiny. The fact is though that he gave his evidence in an unhesitating and forthright way in this connection, he was very clear that he remembered and why he remembered. I cannot discount that different people have different triggers by which fairly mundane events become ingrained in their memeory.

76. I have no reason to disbelieve him particularly bearing in mind my inability to ascribe any motive to him for agreeing to put his reputation and integrity at risk by signing an important legal document in circumstances which did not justify it and giving evidence about that on oath yesterday.

77. Of course, I must add to this the fact that there is an inconclusive expert report. An inconclusive conclusion by the expert does not assist the defendants in discharging the burden of proof.

78. Furthermore, I have concluded that the assertion that somehow Mr Gillette has made an admission that the deceased did not sign the will simply does not stand up to scrutiny.

79. In my judgment, had there been no question of any will post dating the 2004 will, the 2004 Will would govern the distribution of this estate because I am satisfied that it was executed by the deceased and properly witnessed. There is, in my view, more than an absence of the strong evidence necessary to rebut the presumption which arises, there is evidence to support the presumption.

The 2013 Will; The Signature

80. What is the evidence that the deceased's signature on this Will is not genuine?

81. Once again, I heard very wide ranging evidence from the defendants. The primary point made by all three is that the signature on this Will does not look like their father's. Once again, they argue that it is in script form and further, that it omits any initial. The signature simply says "*Dawson*". They argue that the deceased would not have signed his name using only his surname any more than he would have signed it in script form. The third defendant also suggests that the signature is in a "*firm and confident hand*" which, she suggests, militates against it being the signature of the deceased, not least because the deceased suffered from ataxia.

82. It is also suggested that alleged comments by Mr Gillette support the conclusion that the deceased did not sign this Will. The first defendant referred to yet a further telephone conversation with Mr Gillette over the telephone in which it is alleged that Mr Gillette contradicted himself:

> "*when he stated that he and the witness were together at the deceased's house and both saw the deceased sign the Will. In a later conversation Mr Noel Gillette stated that there was a lot going on and they were all talking and he really was not paying too much attention at the time the will was allegedly signed*".

83. I have not been referred to any transcript of any such conversation but even if this was said it is difficult to see how it is an admission that the will was not signed by the deceased.

84. The claimant does not suggest that she was present when the deceased allegedly signed the Will in the presence of Mr Gillette and Mr Austin Dawson but her evidence is that she and her daughter, Sabrina, had been present in the period immediately prior to the Will being signed. They were with the deceased when Mr Gillette and Mr Austin Dawson attended at his property. They met them both. They only retired from the room and indeed the maisonette in order that the deceased could have a private conversation with Mr Gillette about the Will and have it executed. The claimant's position was that this was a private matter between the deceased and his solicitor and it was not appropriate for members of the immediate family to be there.

85. Her evidence, and indeed that of Sabrina, was that they sat in Sabrina's car for 15 minutes or so while the formalities in connection with the Will were completed. While this is not evidence touching directly on the point of whether the deceased signed the Will, it is evidence in support of the contention that Mr Gillette and Mr Austin Dawson attended for that purpose. In that sense, if it is to be believed, it does point in the direction of the contention that the deceased signed the will.

86. I should say that the claimant has an explanation as to why the deceased may have signed the Will only with his surname. It is that by the time of his death he had become disenchanted with the Muslim religion to which he had converted many years before and had then assumed the name Mohammad and he was not minded to refer to that forename in his later years in the light of the disenchantment.

87. The defendants deny that there was any disenchantment with Islam. They point out that the deceased was buried in his Islamic robes (a fact not disputed by the claimant who merely says that it was convenient to do so because they are long and flowing and would have been comfortable for the deceased in his journey to the next world.)

88. Furthermore, the first defendant asserts that he met with the deceased's Imam from Erdington Mosque, Birmingham who confirmed to him that the deceased continued to attend mosque until shortly before his death and had expressed concern to other members of the mosque that he was fearful that the claimant might not give him a Muslim funeral. It is said that this undermines significantly the claimant's evidence and the reliance that can therefore be placed on it.

89. In addition, I have been referred to a witness statement by a Mr David Pearson dated 7 May 2019. Mr Pearson confirms these assertions by the first defendant about the first defendant's conversation with the Imam and members of the mosque and, at paragraph 8 of his witness statement, confirms that he is available to attend Leeds court to give evidence. Mr Pearson has not attended to give oral evidence in support of his written evidence. Accordingly his evidence is no more than hearsay. As I have said earlier, as such its weight is affected. It is untested by cross examination and its weight is also affected by the fact that, despite what Mr Pearson says in paragraph 8 of his witness statement, no reason has been given as to why he has not attended.

90. Nevertheless, what Mr Pearson has said is corroborated by the first defendant who has attended and who did give evidence.

91. The evidence upon which the claimant relies in support of her contention that the deceased did sign the Will rests essentially on the fact that, on its face, the Will appears to be properly attested by 2 witnesses who confirm in terms that the Will was signed by the deceased because the Will has the usual endorsement under which the witnesses have signed which states that it was signed by the testator in their mutual presence.

92. In addition, there is the evidence of Mr Gillette and whose written evidence consists of an affidavit of due execution dated 18 February 2019. He is adamant that he attended on the deceased at his maisonette to take instructions on Sunday, 10 November 2013 and attended with the completed Will for the purposes of its execution on Sunday, 17 November.

93. He said that he went through the terms of the Will with the deceased and he saw the deceased sign the Will. He even remembers that the deceased was sitting in a chair and signed the Will by resting it on Mr Gillette's file because there was no convenient hard surface on which to rest it. I remind myself that the third defendant suggests in her witness statement that the signature is "*firm and confident*". I apprehend that signing in this way is not likely to lead to a "*firm and confident*" signature and, in any event, I see nothing in the signature to necessarily support the third defendant's analysis.

94. Mr Gillette stated that, albeit he is not a solicitor, he has been practising in the law for over 30 years and he would not have signed the Will certifying that it had been signed by the deceased unless it had indeed been signed by the deceased.

95. When asked how he recollected in such detail events of 2013, a response was that it is not that frequent that he goes to somebody's own home to take instructions for a will and for its execution and that the deceased was not any random client. He had been a client of the firm for many years and there was therefore a connection between them. In addition, there was a further connection in that they both hailed from Jamaica. That gave them something in common which also assisted in lodging these events in his mind. In fact, he remembers having a short social chat with the deceased about Jamaica before they got down to taking instructions for the Will. He also pointed out that issues surrounding the deceased's Wills have been extant for many years and so the opportunity for events surrounding the execution of this Will to become ingrained is more long-standing than might first appear.

96. There was some discussion about when Mr Gillette attended on the deceased for the purpose of having the Will executed. He thought it was about 3:30pm on 17 November because he recollects going there immediately after his lunch which he and his wife have at about 2pm on Sundays. It is right to say that this is not wholly consistent with the recollection of the first claimant and Sabrina about when Mr Gillette came to the maisonette on that date. Their recollection is that it was the early evening. This was a discrepancy upon which the defendants relied in support of the contention that the claimant and Sabrina were not to be believed. Of course, when *afternoon* stops and *early evening* starts might be a matter of interpretation and, furthermore, each party is having to give evidence about events some years ago. Mr de Beneducci suggests that the difference might be accounted for by the fact that it may have been dark outside, or at least dusk bearing in mind the time of year and that might have given the claimant and Sabrina the cue for believing that this all occurred later than was in fact the case. That may or may not be so.

97. The point is, in my view, that it is not a critical inconsistency. It is one that might well be expected when parties are giving evidence about events some years ago and the time of the day when they occurred is so peripheral that it is hardly likely to have been engraved in the memories of those participating in it.

98. However, that is not the only inconsistency in the evidence of the claimant and Sabrina upon which the defendants rely. They point out that in their witness statements both the claimant and Sabrina initially say that the Will was executed on 13 November. Permission was sought to amend both their statements to make it clear that it was 17 November.

99. The defendants are not prepared to accept that that was merely a typing error. Their assertion is that it is indicative of a confusion which arises because their story is fabricated. Their lie, it is suggested, is further exposed by the suggestion in their statements that they attended after Sabrina had got home from work. The defendants argue that that cannot be the case if all these events took place on a Sunday because Sabrina admitted that she only worked Monday to Friday at this time.

100. The difficulty with this submission is that the claimant's recollection that she went to see the deceased in the evening was because it was dark and she was accompanied by Sabrina who would only have been able to go after work. That is not really an admission that Sabrina had been at work that day. It is only an admission that when the claimant saw the deceased she recollected that it was dark and she was with Sabrina. That does not discount the possibility of Sabrina accompanying her on a Sunday at a time when it might have been dark.

101. Sabrina on the other hand merely observes that usually she visited her grandfather after she had finished work. That is not an admission that she did not sometimes visit the deceased at weekends. It only provides details of what she usually did. As a result, I do not accept that the statements can necessarily be interpreted as the defendants would suggest and that their evidence of going to the deceased home on Sunday is made up.

102. It seems to me to be much more likely to be a typographical error, much like the error which occurred in the third defendant's statement when she stated that she had a throat operation on 17 February 2012 when it was actually on 21 February 2012 and where at paragraph 8 she spoke of events occurring on 20 February 2012 which she then sought to amend to 28 February 2012. Or even much like the defendant's written submissions in which they mistakenly refer to the month of October rather than November.

103. Additionally, I am fortified in the view that this is no more than a typographical error on the part of the claimant and Sabrina by the fact that it has consistently been the claimant's case that this Will was executed on the 17 November. That is the date referred to in her Particulars of Claim. In addition, I recognise that the claimant's evidence and that of Sabrina is that they were not actually present when the will was executed. If they were making all this up then it may well be said that they would strengthen their case by suggesting that they were. They do not do that.

104. For all these reasons, I do not accept that the reference to 13 November rather than 17 November has the significance that the defendants assert.

105. There is a further point however upon which the defendants rely in support of their assertion that events on 17 November are no more than a fabrication concocted by the claimant, Sabrina and Mr Gillette. This concerns the presentation of part of the Will to Lloyd's Bank.

106. It appears from a letter from the bank dated 13 August 2015 written to the first defendant that on 10 March 2014, shortly after the deceased's death, page 1 of the 2013 Will was sent to Lloyds Bank. It is suggested that it seems likely that this was presented to the bank by the claimant. Why, the defendants ask, is only page 1 of the Will sent to the bank? They argue that it is indicative of the fact that page 2 did not bear a signature and that therefore any signature must have been attached later. My note does not suggest that the claimant was asked about this but a perusal of the letter itself suggests that the Will was sent to the bank in order for them to take some sort of action on it. The bank merely confirm that they were unable to take action on the Will because the balances held were over the limit

under which a balance can be released by the bank to a customer's personal representatives without the grant of probate.

107. It is pointed out that later a completed copy of the Will was sent to the bank. The defendants point out that the evidence of Mr Gillette was that there were no copies of the Will, there was merely the original. They therefore question how it is that a signed copy appears to spontaneously appear. But I really do not see how that supports the contention that the 2013 Will bore a forged signature.

108. In any event, I put the observations of the defendants into the mix in my assessment of the evidence generally. I also put into the mix the fact that the claimant seems to have been unaware that her father had been admitted to hospital on 4 separate occasions between March 2011 and February 2014. It is suggested by the defendants that this demonstrates that the claimant was not as close to the deceased as she would suggest and that her assertion that she is close therefore is a further assault on her credibility. The fact is that he had not been hospital since January 2012 save for the period immediately preceding his death. The fact that the claimant could not bring these hospital admissions immediately to mind in the witness box is not sufficient, in the context of this whole case and other evidence, to fatally undermine her evidence. I remind myself that the defendants can give no direct evidence of the claimant's relationship with the deceased because they had not seen him for years.

109. I now turn briefly to Mr Austin Dawson merely to record that it appears that he has no position on whether the deceased signed the Will. His evidence, such as it is, and I shall deal with this in the context of whether there were two witnesses present, is simply that when he signed the Will he did so in the absence of the other witness. It is however right to record that at no point has he said that he when he witnessed the Will it lacked a signature.

110. Once again, as with the 2004 Will, the expert evidence is inconclusive. Despite the expert being made aware of the defendant's opinion that this Will is signed in a way foreign to the way in which the deceased would have signed it, she still concludes that the evidence is inconclusive.

111. I also observe, essentially in no more than in passing because there is no permission to rely on his evidence, that Mr Jameson Davis also does not specifically support the defendant's assertion that the signature is forged. He merely forms a provisional opinion, subject to the caveat that I have already described, that "*in all the circumstances surrounding the execution*" the signatures are "*suspicious*".

Conclusions as to 2013 Will

112. Once again, as with the 2004 Will, the starting point must be the law to which I have already referred. Once again, I remind myself yet again that the law makes it clear that if a will on the face of it appears to be duly executed, the presumption is in favour of due execution. Once again, as with the 2004 Will, this Will, on the face of it, appears to be duly executed.

113. Furthermore, if the Will is regular in form (once again as clearly this one is) the presumption is very strong. I also remind myself that the defendants' claim in respect of the 2013 Will depends on an allegation of forgery and the onus is on them to establish that on the balance of probabilities.

114. The presumption to which I refer does not stand alone in this case, it is supported by the evidence of Mr Gillette. His evidence that he was actually there is supported by the claimant and Sabrina at least to the extent that they confirm that he did attend on the deceased

on 17 November 2013. As I have explained above, I am not prepared to discount their evidence simply on the basis of what I find to have been a typographical error in their initial statement.

115. While I accept that the claimant and Sabrina may have a motive for misleading the court on the basis that the 2013 Will provides Sabrina with a significant benefit which would not have been achieved under earlier Wills or intestacy, nevertheless it is not apparent at first sight that it is particularly beneficial to the claimant. Firstly, there are more specific bequests which will reduce the size of the residuary estate. Also, the bequests to the defendants from whom she is estranged are increased tenfold, and there is a no contest clause which extends to her. Those three features seem to me to dilute the benefit to the claimant that could have flowed from a forged document. I ask rhetorically why would they be inserted in a will which she had fabricated?

116. In addition, I am satisfied that Mr Gillette's evidence that the Will was consistently in the possession of his firm makes sense and so it is not clear that the claimant would have had an opportunity to forge a signature. I accept that the letter from Irwin Mitchell to which I have been referred which suggests that Mr Gillette was sent a copy of the Will is simply a misunderstanding by Irwin Mitchell of their instructions. There is no evidence that this letter was seen and approved by the claimant before it was sent.

117. In any event, perhaps more importantly, once again, I cannot see any motive why Mr Gillette, an apparently experienced legal practitioner, would certify this Will as having been executed by the deceased if that were not the case. At least a motive was offered by the defendants in relation to the 2004 Will but no motive has been offered for taking such a dishonest step in connection with the 2013 Will and my imagination does not extend so far as to even think of one.

118. Taking all matters into account, as with the 2004 Will, I see nothing to rebut the presumption that the Will was signed by the deceased. Once again, I observe that there is nothing in the expert reports which undermines the evidence of Mr Gillette and a neutral expert report does not assist the defendants in discharging the burden on them of establishing a forgery.

119. Questions about whether the deceased had abandoned his faith are really neither here nor there. They only address the question as to why he might have signed with his surname only. There could be many reasons for that but one thing seems to me to stand out. If this signature had been attached by somebody else it seems unlikely that they would not have bothered to precede the surname with at least an initial. If only to make the forgery look less questionable.

120. Equally, issues relating to the state of Mr Gillette office, the misstating of the 2003 Will by 1000 years and the alleged defensive approach of Mr Gillette in the witness box, in my view are neither here nor there and certainly are insufficient to lead me to take the opposite view.

121. The same is true of the fact that the evidence suggests that he has been threatened with action by the SRA and the Ombudsman. There is no evidence that any referral has resulted in any disciplinary proceedings, much less disciplinary proceedings which have made adverse finding against him or his firm. The state of a solicitor's office is wholly irrelevant to a consideration of whether his evidence is to be believed on the issue of whether he witnessed a will, or even whether he witnessed a will while in the company of another witness.

122. The misstating of the date on the 2003 Will should clearly not have happened but provides no basis which assists me in making the findings that I am obliged to make. The same is true of the fact that the 2013 Will may have been left undated. All these matters, and the delay in applying for probate, might impact upon efficiency but they do not impact upon honesty and credibility.

123. As to his attitude in the witness box. Bearing in mind the serious allegations to which he was subject I think one can understand a degree of defensiveness. One might even envisage a scenario whereby a dishonest person would demonstrate a phlegmatic attitude to allegations of dishonesty but an honest person would be outraged by such allegations.

124. Finally, for completeness, and so that the defendants should not believe that I have overlooked it, I have had regard to the fact that they pray in aid the fact that Mr Gillette mentioned in the course of his evidence that the Will was unsigned. This was clearly an inadvertent comment. His evidence up until that point and thereafter was consistently that the Will was signed when he witnessed it. When he was asked to clarify this remark, it was clear that what he meant to say was that he admitted that the Will was undated rather than unsigned. With respect to the defendants on this allegation they are well and truly attempting to make bricks without straw.

125. Accordingly, I am satisfied that the deceased signed this will.

Was the 2013 Will signed in the presence of 2 witnesses present at the same time?

126. On 28 September 2015 the solicitors had made a *Larke v Nugus* request to Steel and Clunis concerning the 2013 Will. Question 17 asked Steel and Clunis to confirm who was present at the execution of the will and where and how that took place. The response of 27 November 2015 was "*Mr Gillette, Mr Dawson and one of Mr Dawson's friends were present. The signing of the will took place at Mr Dawson's house*"

127. However, in February 2016 Austin Dawson had a telephone conversation with the claimant solicitor, Mr Liam Brook. The note of the conversation states:

> "*LIB explaining who he was and that he acted for Michelle and asking Mr Dawson to confirm that he did witness the Will on that date (17 November 2013). Mr Dawson explaining that he did sign the document to say that he had witnessed it but confirmed that he did not actually witness it when the testator signed the Will along with the solicitor. LIB asking him if he could explain this further and Austin explaining that he came on the day on which it was organised and found that the will had already been signed and he was just simply asked to sign it in an additional space. LIB asking whether this was what was planned and Mr Dawson saying that it was not and he queried whether this was okay but was told that the solicitor had told the deceased that this was fine and that it could be witnessed by him afterwards.*"

128. Unsurprisingly, that resulted in a further letter to Steel and Clunis dated 8 March 2016 in which they were asked to comment. I have not been referred, so far as I can see, to any reply to that letter.

129. On 30 January 2017 Austin Dawson and the first defendant apparently had a telephone conversation which was recorded by the first defendant in which the issue about the execution of the Will was discussed.

130. At one point Austin Dawson appears to say:

> *"I met my uncle and all that I did is just to sign a document that he asked me to sign, I have nothing to do with nothing else and I do not want to have nothing to do with nothing else."*

At another point in this conversation Austin Dawson stated

> *"and then I go along and they asked me to sign this thing I say what it is and he just tell me and I say well, I should be the solicitor should be here but he said the solicitor come and do the Will and ask and leave early a spot for me to sign so he did ask me before if I would sign it for him I say yes you know"*. Later the following exchange takes place:

Alvin Dawson	*"yes so you did not sign that in front of the solicitor."*
Austin Dawson	*I do sign it*
Alvin Dawson	*but not in*
Austin Dawson	*but the solicitor was not there"*
.....	
Austin Dawson	*and because Michelle was not there dad asked me to sign it you know and say the solicitor leave because the date when they give me that erm the solicitor was supposed to come today when I get there he comes yesterday*
Alvin Dawson	*right*
Austin Dawson	*and leave it for me to sign*
Alvin Dawson	*right*
Austin Dawson	*and so I say all rights I just sign it*
Alvin Dawson	*right*
Austin Dawson	*but dad's gone "*

131. There is a difficulty with the evidence of Austin Dawson which is set out in paragraph 49 of Mr de Beneducci's skeleton argument. Austin Dawson has not provided a witness statement in these proceedings and he seems remarkably reluctant to pursue his allegations through official channels.

132. Apparently, when the first defendant complained to the SRA regarding the execution of the 2013 Will, Austin Dawson initially agreed to give a statement but he did not turn up to the meeting arranged with the SRA and further efforts to meet with him proved fruitless.

133. Nevertheless, it is right to note that his conversations with Mr Brook and with the third defendant are evidence to which such weight can be attached as the court thinks appropriate. Inevitably however that weight is affected by the absence of not only oral evidence but any signed statement and his obvious reluctance to repeat these allegations in a formal setting.

134. Mr de Beneducci argues that s4(2)(f) also has some application here because there is clearly bad blood between the claimant and Austin Dawson. Transcripts of his conversations with Alvin Dawson seem to suggest that that is not contentious. He appears to agree with the first defendant that the claimant was a "*nasty person*" and "*evil*". The claimant on the other hand believes that Austin Dawson was guilty of looting the deceased's home after his death.

That is not an issue which I need decide but clearly it evidences the fact that there is a considerable degree of animosity. Mr de Beneducci argues that the hearsay evidence must take this into account when weight is attributed to it.

135. It is also right to observe that there may be something of an inconsistency in Austin Dawson's evidence. His conversations with the first defendant in so far as they can be understood appears to imply that Austin attended at the deceased's home to witness the Will after Mr Gillette had left. The implication being that it was at least the same day. That is not apparently what is said in paragraph 3B of the Particulars of Claim in which he is reported as having said that he attended on the following day.

136. For the claimant, once again there is the evidence of Mr Gillette who is adamant that both he and Austin Dawson were present when this Will was signed. In addition, there is the evidence of the claimant and Sabrina that Austin Dawson and Mr Gillette were present at the same time certainly in the period immediately before the execution of the Will and before the claimant and Sabrina briefly left the deceased's flat.

137. Further support for that account is given by Mr Gillette's file notes regarding the preparation and execution of the Will. He records having received a telephone call on 31 October 2013 with instructions to make a Will.

138. It has to be said that it is unclear to me when this file note was made because it records that he arranged to see the deceased to take instructions on 3 November 2013 but then immediately records that he attended on that date and took instructions. The suggestion is that, certainly insofar as it records events on 31 October 2013, it is not contemporaneous. The same note records the attendance on 17 November. It states:

> *"17/11/13 attended client ( ) will execution. The will was read over to him and he thought that it was okay. He signed and myself and one of his friends witnessed. paid £120"*

That entry appears immediately below the previous entry which relates to an earlier day. It is unclear whether that also was written at the same time.

139. The defendants argue that the lie is given to this file note because it refers to Austin Dawson as a friend when in fact he is a relative. As I have said however, the truth is that none of the defendants seem to be clear whether he is a friend or a relative. They had never met him before. If they are a little confused then one might understand why Mr Gillette might have made an error, or simply made an assumption which may or may not have been wrong.

140. The claimant argues that Mr Gillette has been consistent in his account. It was the account he gave in response to a *Larke v Nugus* request and in supplemental responses dated 5 April 2016. It is true that he has been consistent but, it has to be said, I am not sure how much weight can be attached to this. If Austin Dawson and Mr Gillette were not present at the same time then the only way in which the illusion can be given that they were is if Mr Gillette remained consistent about this single uncomplicated point.

141. Having said that, I am satisfied that his firm evidence is that he and Austin Dawson were present at the same time. Having heard him, I am satisfied that he is to be believed.

142. as I have said, he was clear that he is not inexperienced in making wills which he has done on a consistent basis over the 30 odd years that he has practised law with his wife. He was clear that he knows that the witnesses have to be present together and be in the presence of the testator. In any event the Will itself makes that clear.

143. As I have said before, I cannot detect any motive for his being a party to a fraudulent document. His evidence is that if no witness would have been there he would simply have rearranged the appointment. In fact, all he needed to do was to try and conscript a random neighbour into being a witness.

144. Once again regard needs to be had to basics and I remind myself of the presumption that, if the will on the face of it appears to be duly executed, there is a presumption in favour of due execution.

145. I am not able to conclude that the evidence rebutting the presumption is sufficiently positive or reliable bearing in mind that it emanates from Austin Dawson who has not been prepared to repeat his allegations in a formal setting. There is simply not the strong evidence to rebut the presumption. I also remind myself of what is said in *Williams* at paragraph 13.3. I have already referred to it to the effect that "*even an apparently positive recollection of contradicting the attestation clause must be treated with caution*".

146. But I do not reach the conclusion that this Will was signed in the presence of 2 witnesses simply on the basis of the presumption. As before, I am satisfied that Mr Gillette's account can be relied upon.

147. He gave it in a clear and forthright manner, he was clearly visibly frustrated that his integrity and honesty were being put in doubt. It is not clear why he would deliberately make arrangements that would result in the Will that he had prepared and for which a charge £120 has been made being rendered invalid with the concomitant explanations that he would then have to give to the putative beneficiaries if that invalidity were ever revealed.

148. Once again, I do not regard minor discrepancies as to the time of day when the Will was executed to be of any particular significance. As in relation to the question of determination of issues relating to the signature of the 2013 Will, I do not regard as being of significance evidence to the effect that Mr Dees found the claimant's office to be somewhat shambolic. Nor do I find significant the fact that the 2003 Will is actually dated 3003 rather than 2003 or that the 2013 Will was not dated at all. As I hope I have made clear, none of these say anything as to Mr Gillette's honesty, merely possibly his efficiency. The same goes for these threats about referral to the SRA and threats of litigation, for the reasons I have already set out.

149. In summary I am satisfied that this 2013 Will is validly executed.

Testamentary capacity

150. The final issue to be considered is testamentary capacity. What is the evidence in support of the contention that the deceased lacked it on 17 November 2017 when he gave his instructions and the following week when he executed the Will?

151. It seems to rest to a large extent on an entry in the medical records of the deceased for 8 November 2012 in which, during a home visit by the doctor, the doctor was told by a carer that the deceased's "*memory has been declining slowly for some time*".

152. I have not been referred to any other entry in the GP records which addresses the capacity of the deceased. Mr de Beneducci points out that the deceased was seen on 9 September 2013 and 2 December 2013 (a time which brackets the time when he gave instructions for and executed the 2013 Will) by the same doctor that made the entry on 8 November 2012 and there is no mention in either of those entries about the deceased's capacity or lack of it. There are no entries suggesting the onset of any form of senility.

153. The allegation of lack of capacity also rests on the evidence of the first claimant and Mr Snow as to what they were told by carers. I have already referred to this above. It relates to those 2 gentlemen being told by carers after the deceased's death that the deceased could hardly hold a pen and was so confused he never knew what they of the week it was. I have not heard from the carers. I do not have any witness statements from them. The defendants say that data protection provisions preclude them from giving evidence but it is not immediately clear to me why that would be.

154. Even if there are data protection obstacles nevertheless this is simply hearsay evidence which has not been tested by cross examination and it is double hearsay so far as Mr Snow is concerned in the sense that Mr Snow is reporting other than orally on what he has been told by the carers. I have already observed that Mr Snow's recollection appears to be at fault in any event in connection with the number of wills that were given to the carers to look at. That seems to be accepted, certainly by the second defendant.

155. As to the carers' conclusions, it is by no means clear to what extent those conclusions may have been prompted by the approach taken by the first defendant and/or Mr Snow. It has already been admitted that, in terms of questions relating to the deceased's signature on the Will which were put to the carers, the defendant had already made it clear to them that he did not think that the deceased signed the Wills. Mr de Beneducci argues that accordingly at best, the carers will have known what answers the claimant will have wanted and their absence today makes it impossible to establish whether this coloured their replies.

156. Finally, the defendant pray in aid the fact that the Will contains addresses for certain of the beneficiaries which are years out of date. They suggest that that is indicative of a testator who really does not know what is going on. In fact it transpires from the evidence of Mr Gillette that he prepared the 2013 Will using the 2004 Will as a template and he simply transferred the addresses in the earlier Will into the later Will. That was obviously a mistake, once again one which may give rise to questions about efficiency, but one can see that in those circumstances the deceased will have had little input into the addresses that ultimately appeared in the 2013 Will.

157. The claimant argues that even if the deceased had been told of the addresses or read them prior to signing the Will it may well be that they were not a matter of concern to him. What would have mattered was whether the Will reflected his intentions with regard to the devolution of his estate. I can see that that might be so.

158. As regards the evidence of all the defendants concerning capacity, it must be remembered that none of them had seen the claimant for very many years indeed not since the early 2000's.

159. Mr de Beneducci points out that there is simply no medical evidence to support a conclusion that the deceased lacked necessary testamentary capacity. The GP records have not been sent to a suitably qualified medical practitioner, there is no expert who has reported on this issue. He argues that that is fatal to an attack on testamentary capacity where there is a presumption in favour of it where the will has been executed properly and is rational. I have of course found that the Will was properly executed.

160. Furthermore, Mr de Beneducci argues there is positive evidence of testamentary capacity. This is the evidence of the first claimant, Sabrina and Mr Gillette. The first claimant and Sabrina were clear that the deceased was compos mentis. One could have a sensible conversation with him and he knew what was going on.

161. Mr Gillette took the same view over 2 meetings namely when he took instructions and when he attended to execute the Will. He had a clear recollection of a conversation with the deceased about Jamaica and also a clear recollection of clear instructions being given to him to prepare a will which benefited quite a number of the deceased's relatives.

162. Once again, it is appropriate to have regard to the fact that Mr Gillette is an experienced legal practitioner in this field. He gave evidence to the effect that on other occasions when he had been concerned about the capacity of a testator he had refused to draft a will. He argued that this would have been no different. He had no concerns.

163. Furthermore, Mr de Beneducci argues that it is not possible to apply the facts of this case to the legal test in *Banks v Goodfellow* to which I have referred above and come up with a conclusion that the deceased lacked capacity because none of the facts, even on the defendant's case, support a finding that the deceased did not understand the effect of executing a will and its effect in respect of his estate. In addition, the Will itself provides a number of bequests suggesting that he understood and recollected the extent of his property and the nature and extent of claims upon him. In addition, it is noted that he increased the bequests to the defendants from that which existed in the 2004 Will. That runs counter to any proposition that his affections were poisoned, the fourth limb of the test in *Banks v Goodfellow*.

164. All these arguments by Mr de Beneducci are, in my view, powerful and persuasive. I merely observe that in the closing submissions while the defendants had much to say in relation to the other 3 issues, they did not touch at all upon testamentary capacity. Of course, I recognise that they are litigants in person and that of course the issue is one which I have to consider carefully, whether the defendants focus on it or not but if the defendant had anything to say on testamentary capacity it would have been useful to hear it.

165. In the end, I remind myself of the requirements of *In Re Key Deceased* which I refer to above and the shifting burdens of proof. The fact that I have found as a fact that the 2013 Will is duly executed and is clearly rational on its face gives rise to the presumption that it was made by a testator with capacity.

166. The evidential obligation then shifts to the defendants to establish that there is a real doubt about capacity. I am not satisfied that they have discharged even that burden.

167. In those circumstances, it becomes unnecessary for the claimant to establish capacity but even if we had got that far it seems to me that the evidence in favour of capacity outweighs the very limited and essentially hearsay evidence that the deceased lacked it.

168. The defendants cannot give any direct evidence on this, they had no relationship at all with the deceased for many years prior to his death. The GP records do not suggest that the GP was concerned about capacity issues. The Will itself recognises an obligation to a fairly large number of people and it is clearly a rational will. There is at least a cogent explanation as to why out of date addresses appear in the Will and I have the clear evidence of capacity not only of the claimant and Sabrina but also that of Mr Gillette. All that counters all of this is one entry about diminishing memory and some conversations with carers who have not given any direct evidence.

169. Added to that is the fact that the defendants come up against the observations of the court in *Hawes v Burgess* to which I have earlier referred. That case dealt with issues of mental capacity and it is authority for the proposition that where the will has been prepared by an independent and experienced solicitor it will be markedly more difficult to challenge its

validity on grounds of lack of mental capacity. There are the additional observations at paragraph 60 of that judgment which I have already recited and which require the court not to be too ready to upset a will on grounds of lack of capacity where the will is drafted by an independent lawyer. I recognise of course that Mr Gillette is not a solicitor but it would be hard to say that that means that those principles are inapplicable to him as a man who has been working in the law for over 30 years.

170. I am accordingly satisfied that the deceased had testamentary capacity when he gave instructions for and executed the 2013 Will.

Summary

171. In the light of my findings I propose to propound in favour of the 2013 Will in solemn form and to revoke the letters of administration granted to the defendants.

Final Remarks

172. Finally, I wish to make two points. Firstly, I wish to make clear that in coming to my conclusions I have paid particular regard to the defendants' written submissions for which I have been very grateful. The fact that I have referred to some aspects of them and not others should not be taken to mean that I have not considered it in its entirety.

173. Much of the submissions relate to the defendants' concerns about why this case has reached court at all. I trust that they will appreciate that these are not matters that it is appropriate to consider in terms of determination of the issues. As I made clear, those issues may ultimately influence the decision about costs but that is a different matter and one which, no doubt, we shall soon be obliged to address.

174. Secondly, I wish to thank particularly the second defendant for the manner in which he has conducted this hearing on behalf of himself and his brother and sister. He did so in a courteous and focused manner and he dealt with the witnesses in the same way. That is very much appreciated. Let me also say that I appreciate the manner in which Mr Dees as a McKenzie friend has handled his obligations. The relationship between the second defendant and his McKenzie friend was in effect a textbook one from the court's point of view and I am grateful to them both, as I am to Mr de Beneducci.

HH Judge Saffman